

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CHRISTOPHER DOTY, Plaintiff,)	C.A. No. 13-60 Erie
)	
v.)	
)	
BARRY SNYDER, et al., Defendants.)	Chief Judge Conti Magistrate Judge Baxter

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that Defendants Lionel Hamer, III (“Hamer”), Shawnta Buckner (“Buckner”), and Stephanie Milford (“Milford”), be dismissed from this case due to Plaintiff’s failure to prosecute.

II. REPORT

A. Relevant Procedural History

Plaintiff Christopher Doty, an individual incarcerated at the State Correctional Institution at Frackville, Pennsylvania, filed this civil rights action on February 20, 2013. On March 4, 2013, this Court issued an Order directing the U.S. Marshal to serve all named Defendants with a copy of the Complaint in accordance with service instructions to be provided by Plaintiff [ECF No. 8]. On July 25, 2013, the Court received a letter from the U.S. Marshal stating that Defendants Hamer, Buckner, and Milford were not able to be personally served because Plaintiff failed to provide directions for service [ECF No. 55]. As a result, this Court issued an Order on August 2, 2013, requiring Plaintiff to provide the U.S. Marshal with the necessary address information and documentation to enable service upon Defendants Hamer, Buckner and

Milford. This Order advised Plaintiff that, if he did not provide the necessary service instructions to the U.S. Marshal by August 19, 2013, this Court would recommend dismissal of said Defendants due to Plaintiff's failure to prosecute [ECF No. 56]. By letter dated September 4, 2013, the U.S. Marshal has since advised the Court that Plaintiff has failed to provide the required service instructions in accordance with the Court's Order of August 2, 2013 [ECF No. 60].

B. Discussion

The United States Court of Appeals for the Third Circuit has set out a six-factor balancing test to guide a court in determining whether dismissal of a case is appropriate. Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984). The court must consider: 1) the extent of the party's personal responsibility; 2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; 3) a history of dilatoriness; 4) whether the conduct of the party or attorney was willful or in bad faith; 5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and 6) the meritoriousness of the claim or defense. Id. at 868. Not all of the six factors need to weigh in favor of dismissal before dismissal is warranted. Hicks v. Feeney, 850 F.2d 152 (3d Cir. 1988).

Applying the Poulis factors to the present matter, this Court recommends the dismissal of Defendants Hamer, Buckner, and Milford from this case. For the last several months, Plaintiff has taken none of the necessary steps to prosecute this case against said Defendants. Further, Plaintiff has ignored multiple Orders of this Court that expressly stated his case would be dismissed against said Defendants for failure to prosecute if he did not comply. Plaintiff is proceeding pro se and therefore bears all of the responsibility for any failure in the prosecution of his claims. Alternative sanctions, such as monetary penalties, are inappropriate with indigent parties.

III CONCLUSION

For the foregoing reasons, it is respectfully recommended that Defendants Hamer, Buckner, and Milford be dismissed from this case due to Plaintiff's failure to prosecute.

In accordance with the Federal Magistrates Act, 28 U.S.C. § 636(b)(1), and Fed.R.Civ.P. 72(b)(2), the parties are allowed fourteen (14) days from the date of service to file written objections to this report and recommendation. Any party opposing the objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to file objections will waive the right to appeal. Brightwell v. Lehman, 637 F. 3d 187, 193 n. 7 (3d Cir. 2011).

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States Magistrate Judge

Dated: September 9, 2013

cc: The Honorable Joy Flowers Conti
Chief United States District Judge